

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD ROY SCOTT,

Plaintiff,

v.

WILL BAILEY,

Defendant.

No. MC05-5029

ORDER

This matter comes before the Court *sua sponte*. On April 5, 2005, the United States District Court judges who sit in Tacoma entered an order dismissing a number of plaintiff's causes of action and barring future litigation unless plaintiff provides a signed affidavit, along with the proposed complaint, "verifying under penalty of perjury that none of the issues raised in the proposed complaint have been litigated in the past by the plaintiff." On March 13, 2007, the Clerk of Court received a complaint, a motion to proceed *in forma pauperis*, a written consent for payment of costs, a praecipe, and a declaration from Mr. Scott. These documents were posted in MC05-5029 at Dkt. #106. As directed in the bar order, the Clerk forwarded the documents to the undersigned for review.

In the required declaration, plaintiff asserts that "I have not filed this complaint before," but also states that "this complaint only refers to event[s] that occurred [sic] after I file[d] Scott v. Bailey C06-5173 Amendment [sic]." See MC05-5029 at Dkt. #106 (Declaration of Plaintiff). In the complaint, plaintiff seeks relief for "retaliation" by Will Bailey for events that appear to

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1 have occurred between April 2006 and July 2006 after plaintiff filed his first complaint against
2 Mr. Bailey in March 2006. See Dkt. #106 (“Complaint Under 1983 Pendant State Claims”) at
3 ¶¶3, 6, 7; Dkt. #1 in Case No. C06-5173RBL.


4 In his complaint in Scott v. Bailey (Case No. C06-5173RBL), plaintiff also appeared to
5 be seeking relief for retaliation by Mr. Bailey. See Dkt. #39 at 2. In this prior action, on
6 September 8, 2006, plaintiff was granted leave until October 30, 2006 “to file an amended
7 complaint that will act as a complete substitute for the original [complaint]” to support “the basis
8 of a retaliation claim.” See Dkt. #39 in C06-5173RBL at 2 (Report and Recommendation); Dkt.
9 #44 in C06-5173RBL (Order Adopting Report and Recommendation). This deadline was
10 extended until December 1, 2006, and the case was stayed until a proper amended complaint
11 was filed. See Dkt #59 in C06-5173RBL at 2. On February 22, 2007, the C06-5187RBL action
12 was dismissed with prejudice for failure to prosecute and failure to comply with court orders
13 because: “plaintiff has failed to properly amend his complaint despite being given over 90 days
14 from the time of the Report and Recommendation to amend (Dkt. #39), and nearly 90 days from
15 the Order adopting that Report and Recommendation (Dkt. #33).” See Dkt. #69 (Order
16 Adopting Report and Recommendation) in C06-5173RBL.

17 Based on this history, plaintiff was given until December 1, 2006 to properly amend his
18 complaint against Mr. Bailey for retaliation, but failed to do so. The allegations that plaintiff
19 raises in his proposed new action against Mr. Bailey relate to events that occurred between April
20 and July 2006. Accordingly, had plaintiff properly amended his complaint in the C06-5173RBL
21 action, plaintiff could have incorporated the allegations in his new proposed complaint in the
22 previous action styled Scott v. Bailey. Therefore, plaintiff’s statement in his declaration that
23 “this complaint only refers to event[s] that occur[r]ed after I file[d] [the] Scott v. Bailey C06-
24 5173 Amendment” is false because plaintiff never properly attempted to amend his complaint
25 to include these allegations. For this reason, plaintiff’s new action shall not be allowed to
26 proceed.

1 Additionally, on March 26, 2007, this Court entered an order barring plaintiff from
2 proceeding *in forma pauperis* in any future action in the United States District Court for the
3 Western District of Washington unless the Court determines he is in imminent danger of death
4 or serious injury. See Dkt. #95 in Scott v. Weinberg, et al. (Case No. C06-5172-FDB) (“Order
5 Adopting Report and Recommendation and Order Restricting Future *In Forma Pauperis*
6 Filings”) at 15. Upon review of the documents filed by plaintiff, the Court finds there is no
7 showing that plaintiff is in imminent danger of serious physical injury.

8 For all the foregoing reasons, the new action submitted on March 13, 2007 (Dkt. #106),
9 shall not be permitted to proceed. The Clerk of Court shall docket this order in MC05-5029.
10 Neither the Clerk of Court nor defendants need take any further action with regards to this
11 matter.

12 DATED this 23rd day of July, 2007.

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15 Robert S. Lasnik
16 United States District Judge
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